IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7187 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MUKESH MAHESHCHANDRA AGRAWAL

Versus

STATE OF GUJARAT

Appearance:

MS KRISHNA U MISHRA for Petitioner

MR AJ DESAI ASSTT GOVT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 25/01/2000

ORAL JUDGEMENT

#. Heard Ms.K.U.Mishra, learned advocate for the petitioner and Mr.A.J.Desai, learned AGP appearing for respondents No. 1, 2 & 3.

#. The detention order dated 18-5-1999 passed by

respondent No. 2 - The Commissioner of Police, Ahmedabad against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged by way of this present petition under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at Annexure-C which is at running page 16 interalia indicates that in all 5 criminal cases were registered against the petitioner at Kagadapith police station on 1-1-99, 1-2-1999, 7-4-99, 16-4-99, 8-5-98 and 10-4-99 respectively for the offence made punishable under Sections 392, 114, and 379, 114 and 399, 135(1) of BPA, 395, 397 and 135(1) of BP Act and 395, 397, 34 BPA, 136(1) as well as 395, 397, BPA 135(1) respectively. That all these cases are pending for investigation except the case registered vide C.R. No : 172 /99 at kagadapith police station which is pending for trial in the court.

#. Over and above, two witnesses on assurance of anonymity have given statement dated 17-5-99 against the anti social activities of the petitioner and have referred to alleged incidents dated 20-3-99 and 28-3-99 respectively.

That on the basis of the said material, the respondent No. 2 - the Commissioner of Police, Ahmedabad as the detaining authority has come to the conclusion that the petitioner / detenu is a dangerous person within the meaning of Section 2(c) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial activities, and as such, detention order under PASA is necessary and hence the impugned order is passed.

#. The petitioner has challenged the impugned order of detention on numerous grounds. It has been contended on behalf of the petitioner at bar that the impugned order is bad in law on account of the non application of mind inasmuch as, the day on which the impugned order is passed, the petitioner was in judicial custody in respect to the offence registered against the petitioner. That the detaining authority has failed to consider the availability of less drastic remedy like claiming of cancellation of bail granted to the petitioner in 3 registered cases though available under Section 437(5) of the CrPC and thereby, the subjective satisfaction reached by the detaining authority has been vitiated rendering the impugned order invalid.

#. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND OTHERS 1995 (2) GLR 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the CrPC claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction, thus rendering the detention order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal No : 1056 of 1999 decided on 15-9-99 by this Court (Coram : C.K.Thakker & A.L.Dave, JJ.).

#. In the instant case, it is noteworthy that in the penalty mate para of the grounds of detention, the detaining authority has observed that the petitioner is at present in the judicial custody but he is likely to move bail application and having got himself released on bail, is likely to continue his anti social activities, whereby, the detention order is necessary. The said observation made by the detaining authority in the grounds of detention suggests that the detaining authority has acted on apprehension rather than the material placed before him. That while passing the impugned order, the detaining authority has failed to consider the aspect that in offence with serious allegations, bail could have been opposed and if granted, on material produced before the Court, cancellation of the same could have been claimed to prevent the petitioner from continuing his anti social activities. The grounds of detention don't show any fact whereby it could be inferred that the detaining authority has considered the said aspect before passing the detention order. Under these circumstances, it is difficult to uphold the same.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 18-5-99 passed by respondent No. 2 - The Commissioner of Police, Ahmedabad against the petitioner is hereby quashed and set aside. The petitioner - MUKESH MAHESHCHANDRA AGRAWAL is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

Date : 25-1-2000 [A.K.Trivedi, J.]

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